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88-1416

Supreme Court, U.S.
FILED
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CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

WILLIAM BARNTHOUSE - PETITIONER

vs.

TERESA BARNTHOUSE - RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF COLORADO

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. DOES A CONTEMPT ORDER AND INCARCERATION VIOLATE PETITIONER'S DUE PROCESS RIGHTS BECAUSE IT WAS ISSUED BY A RECUSED JUDGE, WITHOUT A PROPERLY NOTICED HEARING, WITHOUT WITNESSES BEING ALLOWED TO BE CALLED, BASED ON TEMPORARY INJUNCTION LANGUAGE THAT WAS NOT IN EFFECT, AND BASED ON INCOMPLETE ACCOUNTING AND HEARSAY EVIDENCE FROM PRIOR UNRELATED HEARINGS?

B. DID THE PARTICIPATION OF A COURT APPOINTED GUARDIAN AD LITEM (APPOINTED TO REPRESENT THE CHILDREN OF A MARRIAGE) PREJUDICE THE ADMINISTRATION OF JUSTICE IN JUDICIAL PROCEEDINGS, INCLUDING THE CONTEMPT HEARING, WHEN: THE GUARDIAN AD LITEM MADE FALSE REPORTS TO THE COURT; ACTED AS AN ALLIED DEFACTO- CO-COUNSEL FOR THE RESPONDENT; CONDUCTED A MEETING WITH THE TRIAL JUDGE AND THE RESPONDENT AND AN EXPARTE COMMUNICATION WITH THE TRIAL JUDGE, WITHOUT THE PETITIONER BEING BEING PRESENT OR NOTIFIED OF THE MEETING OR THE EXPARTE COMMUNICATION, AND COLLECTED FEES FOR SUCH CONDUCT?

LIST OF ALL PARTIES

PETITIONER, William J. Barnthouse was the respondent below in the lower court.

RESPONDENT, Teresa Barnthouse was the petitioner below in the lower court.

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B. DID THE PARTICIPATION OF A COURT APPOINTED GUARDIAN AD LITEM (APPOINTED TO REPRESENT THE CHILDREN OF A MARRIAGE) REJUDICE THE ADMINISTRATION OF JUSTICE IN JUDICIAL PROCEEDINGS, INCLUDING THE CONTEMPT HEARING, WHEN: THE GUARDIAN AD LITEM MADE FALSE REPORTS TO THE COURT; ACTED AS AN ALLIED, DEFACTO CO-COUNSEL FOR THE RESPONDENT; CONDUCTED A MEETING WITH THE TRIAL JUDGE AND THE RESPONDENT AND AN EXPARTE COMMUNICATION WITH THE TRIAL JUDGE, WITHOUT THE PETITIONER BEING BEING PRESENT OR NOTIFIED QF THE MEETING OR THE EXPARTE COMMUNICATION; AND COLLECTED FEES FOR SUCH CONDUCT? (ii)

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PETITIONER FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

Petitioner, William Barnthouse respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Colorado entered in the above-entitled cause on 11/28/88.

I.

OPINION BELOW

The 11/28/88 opinion of the Supreme Court of Colorado denying Petitioner's Petitioner For Writ of Certiorari in the Colorado Supreme Court, is attached as Appendix A. Such denial is the subject of this Petition for Writ of Certiorari to this United States Supreme Court.

The opinion of the Colorado Court of Appeals is attached as Appendix B. Such

appellate opinion is the subject of this Petition.

Trial court's, 5/19/86 oral Recusal Order is attached as Appendix C. Such Recusal Order is related to the subject of this Petition.

The subject 5/22/86 Order Re: Contempt Citations is attached as Appendix D ("Contempt Order"). Such Contempt Order is the original lower trial court decision which is the subject of said appeal and this Petition.

On 12/16/88, the Colorado Supreme Court ruled Petitioner's Motion to Reconsider Order of Court or Motion for Rehearing striken (Appendix O).

II.

GROUNDS FOR JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion of the Supreme Court of Colorado was filed on 11/28/88, with no time specified. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 2101 (c), and 28 U.S.C. section 1257 (3), since due process rights and the right to confront and call witnesses under the United States Constitution were violated. The issues arise from a civil domestic relations hearing, wherein a recused trial judge (no longer presiding on the case) held Petitioner in contempt on matters not within the knowledge or presence of the trial judge and without noticing and holding a Contempt Hearing and without allowing Petitioner to call witnesses.

III.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis added to pertinent section).

The Sixth Amendment of the United States Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." (Emphasis added to pertinent section).

The Fourteenth Amendment of the United States Constitution provides:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." (Emphasis added to pertinent section).

IV.

STATEMENT OF THE CASE & FACTS

The May 22, 1986 Order Re: Contempt Citations on page 1 (App D,p1) referred to the "Contempt Citations issued on October 18, 1985 and November 26, 1986", and found: (1) on page 2, pertaining to the 10/18/85 Contempt Citation, that Respondent was in violation of the 3/11/85 Temporary Injunction (but fails to note

such Injunction was not in effect at the time of the alleged violation); and (2) on Appendix D, pp 9 & 10, pertaining to the 11/26/86 Contempt Citation, found that the Petitioner (respondent below):

> "is in contempt on the other issues in respect to the November 6, 1985, Contempt Citation, in that he has discussed the dissolution action with the children; he has disparaged the (Respondent, petitioner-below); he has made plans for the children's sports.."

Petitioner's Opening Brief in the Colorado Court of Appeals explained that:

> "The Contempt Order was based upon two citations, issued on Oct 18, 1985 and Nov 26, 1985. the first dealt with financial matters, the second dealt with the alleged disparagement of Terri (Respondent) by Bill (Petitioner, discussion of the case with the children, and alleged interferences with Terri's visitation time.

A. FACTS PERTAINING TO THE OCT. 18, 1985 CONTEMPT CITATION RE: FINANCIAL MATTERS.

On 3/11/85 the Respondent's attorney issued a Summons for Dissolution

(of marriage) and (statutory) Temporary Injunction (Appendix E), which incorporated statutory injunction language.

The 3/11/85 Temporary Injunction, in its own text (App E,p3,ln16&17), states it is only effective "until further order of Court." It became ineffective on 3/12/85.

On 3/12/85, after a TRO hearing, trial Judge Reed, issued an explicit written Temporary Restraining Order ("TRO") [Appendix F]; superceeding, modifying and replacing the 3/11/85 (statutory) Temporary Injunction.

On 10/18/85, trial Judge Steinhardt issued a Contempt Citation (Appendix G) based on an alleged violation of the 3/11/85 Temporary Injunction language.

The subject 5/22/86 Order Re: Contempt Citations (Appendix D) was mistakenly based upon a violation of the 3/11/85 Temporary Injunction language that

was not in effect (App D,p2,ln13-p3,ln7), and had not been in effect since it was replaced by the 3/12/85 TRO.

The trial judge, without a Contempt Hearing, mistakenly relied on the erroneous 10/18/85 Contempt Citation, which was erroneously based on the 3/11/85 Temporary Injunction language, both of which were drafted by the Respondent's attorney.

The 5/22/86 Order Re: Contempt Citations clearly indicates it erroneously relied solely on the 3/11/85 Temporary Injunction, by quoting the language directly from the (non-effective) 3/11/85 Temporary Injunction:

> "...a Summons for Dissolution of Marriage, which contained the Temporary Injunction enjoining the respondent-(below) from transferring..., without consent of the other party or Order of Court, any marital property...,...and requiring each party to notify the other party of any proposed extraordinary expenditure made after the Injunction in effect".

Thus. Petitioner was held in contempt for violating the language of the 3/11/85 Temporary Injunction - for transferring "... without consent of the other party or Order of Court" and for not "notify(ing) the other party of proposed...expenditure made after the Injunction in Effect". However, such 3/11/85 Temporary Injunction language requirement was not in effect, and had not been in effect since 3/12/85 when the explicit, written TRO went into effect.

The language of the 3/12/85 TRO (App F) is drastically different from the language in the 3/11/85 Temporary Injunction (App E,p4,A). The 3/11/85 Temporary Injunction stated, that assets could not be disposed of "...without consent of the other party or Order of Court..." (App E,p4, A); however, this language was not in effect after 3/12/85. when Judge Reed's TRO superceeded it.

The only effective language was in the 3/12/85 TRO, which merely prohibited the Petitioner from disposing of any marital assets "..except in the usual course of business or the necessities of life." This 3/12/85 TRO merely required the Petitioner only "..to account to petitioner-below-wife (Respondent herein) and the (trial) Court for any extraordinary expenditures made by you after this (3/12/85) Order is served."

The Petitioner complied with such requirement to account. At the 2/5/86 Permanent Orders Hearing, he submitted a final, complete accounting and Accounting Exhibit FFF and its supporting documentation, all of which is in the record, and which indicated that all expenditures were in the usual course of business or for the necessities of life. Also, Respondent's attorney stipulated the bulk of Petitioner's accounting.

Further, the trial court's 5/22/86 Order Re: Contempt Citations, also, mistakely overlooked that the trial court had previously Ordered Petitioner to pay $42,000.00 trial court ordered expenses, and Petitioner had $69,004.00 in dissolution/custody medical and legal expenses caused by the proceedings in the trial court. Thus, the trial court held Petitioner in contempt for paying expenses the trial court, itself, had previously ordered Petitioner to pay and for paying dissolution expenses.

If a Contempt Hearing would have been held on the 10/18/85 Contempt Citation, Petitioner would have pointed out that the Citation erroneously relied on the 3/11/85 Temporary Injunction language that was not in effect. But no Contempt Hearing was ever held.

Additionally, the 5/22/86 Order Re: Contempt Citations (App D, page 5) also

indicates it mistakenly relied on "Exhibit BB", which was an incomplete, temporary accounting from the 10/31/85 dissolution-Temporary Orders Hearing, and failed to mention and ignored the final, complete, accounting and accounting Exhibit FFF and supporting documents, submitted in the 2/5/86 Permanent Orders Hearing.

Part of the trial court's error arose because it mistakenly relied upon a temporary and incomplete accounting done in October 1985 to reach the conclusion the money was not accounted for. The trial court overlooked that Petitioner had fully and completely accounted for the assets in a prior hearing with Exhibit FFF and that Respondent's attorney stipulated to Petitioner's accounting.

If a Contempt Hearing would have been held, this erroneous reliance on the incomplete-temporary accounting documents

could have been noted to the trial court, and the trial court could have been reminded of the final Exhibit FFF accounting document and of the Respondent's stipulation to Petitioner's accounting; and, most importantly, the trial court could have been apprised that it was relying on the wrong 3/11/85 Temporary Injuntion language, that was not and had not been in effect since the 3/12/85 TRO went into effect.

B. FACTS PERTAINING TO THE NOVEMBER 26, 1985 CONTEMPT CITATION RE: DISPARAGEMENT AND DISCUSSION OF THE DISSOLUTION CASE.

On 11/6/85, trial Judge Steinhardt issued a Order Re: Motion To Modify Temporary Orders, wherein she ordered:

> "The father is not to make any plans for lessons, plays or movies, or the like, for the children during a time when the mother has visitation....Neither party shall disparage the other in front of the children or within their hearing. The

parties are to make every effort not to discuss the dissolution action in front of the children or to discuss their feelings surrounding the litigation or Court orders."

On 11/18/85, the trial court's Minute Order (Appendix H) set the dissolution Permanent Orders hearing for December 19 & 20, 1985. At such time, no Minute Order set a hearing date for the 10/18/85 Contempt Citation to be heard.

On 11/26/85, trial Judge Steinhardt issued a second Contempt Citation (Appendix I) based on Petitioner's alleged violation of such language in her 11/6/85 Order Re: Motion to Modify Temporary Orders restricting discussing the case, disparaging the other party, and scheduling lessons and plays, etc. for the children when the mother had visitation.

C. FACTS PERTAINING TO THE DENIAL OF WITNESSES ON CONTEMPT ISSUES, AND THE FAILURE TO HOLD A CONTEMPT HEARING.

Petitioner's 12/9/85 Motion For Court's Interview Of The Boys, In Camera Or Otherwise, At The Final Hearing, page 2 raised "constitutional rights" to call the boys as witnesses (Trial court record,Vol.2, p302). Petitioner's other 12/9/85 Motion For Appearance of the Boys as Witnesses For Direct Examination and/Or Rebutal And/or Regarding Contempt Citation, Separate from Court's Interview, explained that the boys were needed as "contempt rebuttal witnesses" and they were the "only witnesses able to rebut certain contempt accusations" against Petitioner (Trial court record, Vol. 2.,p287).

The trial court's 12/20/85 oral Order denied both of Petitioner's Motions to call the children as witnesses and as witnesses regarding contempt issues, but merely allowed a limited interview with the boys regarding only the custody issue

(12/20/85 Perm Order transcript Vol VI,p6,ln1-14). Such oral Order clearly indicates that the trial judge contemplated holding only a dissolution-permanent orders hearing during the December 20, 1985 to February 6, 1986 permanent orders hearings and was not considering contempt issues during the permanent orders hearings.

Thus, during the dissolution-permanent orders hearing, the trial judge denied witnesses regarding contempt issues, she did not take evidence on contempt issues, and she did not view the dissolution- permanent orders hearing as also a Contempt Hearing; this is confirmed by the above-mentioned oral order, and further clearly confirmed by the trial judge's explicit statement that she was not considering contempt issues during the permanent orders hearing, wherein she stated:

"...on the issue of the contempt citation, which I had not previously thought about...that matter will be continued..." (12/20/85 dissolution-permanent orders hearing transcript, Vol. VI, p.112, ln9-11; Appendix P).

Thus, the trial judge clearly ordered that she would not review contempt issues during the dissolution-permanent orders hearing. Nevertheless, after the permanent orders hearing is concluded, and without ever holding a Contempt Hearing, the trial judge turns around and without notice issues her May 22, 1986, Order Re: Contempt Citations (Appendix D). This Contempt Order indicates that the only evidence to support the Contempt findings were taken, without notice, from the 12/20/85 to 2/6/86 permanent orders hearings; The Contempt Order reads:

"During the hearing on Permanent Orders, the (Respondent herein, petitioner below) presented evidence in support of her motions for contempt" (Appendix D).

Thus, the only evidence on contempt issues came from the dissolution-Permanent Orders Hearing, and came in without notice that the same was being used for a later Contempt Order.

Trial judge Steinhardt, without notice, took the evidence from the 12/20/85 to 2/6/86 Dissolution-Permanent Orders Hearing, and used it as the sole basis of her 5/22/86 Order Re: Contempt Citations, and imposed incarceration, without notice or a Contempt Hearing.

Petitioner offered, his sons as witnesses but was prohibited by Judge Steinhardt from bringing them, the only non-party witnesses, to the stand for any purpose. Respondent was not allowed to call the boys as witnesses during the Permanent Orders Hearing. The boys were the only non-party witnesses who possessed critical information regarding the contempt issues. Petitioner was never

given the opportunity to call the boys or any other witnesses on the Contempt Citation issues, since no Contempt Hearing was held.

The 10/18/85 Contempt Citation, in its text, set 10/23/85 as the hearing date; however, no hearing on contempt issues was held. The trial court's 10/23/85 Minute Order confirms no Contempt Hearing was held. The 10/23/85 Minute Order indicates that only a dissolution-Temporary Orders hearing was held on custody issues on that date (Appendix J).

The 11/26/85 Contempt Citation, in its text, set 12/19/85 as the hearing date; however, no hearing on any matters was ever held on 12/19/85; the trial court's Minute Orders confirm that no matters were heard on 12/19/85.

On 12/20/85 the Dissolution-Permanent Orders Hearing commenced, and concluded on 2/6/85. The trial court's December 21 &

31, 1985, and January 6 & 30, 1986, and February 3, 4, 5 & 6, 1986 Minute Orders (Appendix K) indicate that only the dissolution Permanent Orders hearing was held on each such date, but there is no mention of either the 10/18/85 or the 11/26/85 Contempt Citiation Hearing being set, noticed or held.

On 4/1/86 the Dissolution Permanent Orders was issued; it made no mention of contempt issues having been heard.

The trial court's 4/28/86 Minute Order (Appendix L), gave notice of a Contempt Citation Hearing set for 5/19/86.

However, the trial court's 5/13/86 Minute Order (Appendix M) eliminated the 5/19/86 Contempt Citation Hearing, by precluding it with five (5) different listed matters to be heard on the 5/19/86 Hearing. The 5/19/86 Minute Order (Appendix N) confirmed that no Contempt Hearing was heard at the 5/19/86 hearing,

but that the other matters were heard. Thus, no Contempt Hearing was ever held on the Contempt Citations.

D. FACTS PERTAINING TO THE RECUSAL OF THE TRIAL JUDGE BEFORE SHE EXECUTED THE CONTEMPT ORDER.

On 5/19/85, Judge Steinhardt recused herself from the case (Appendix C).

On 5/22/86, three days after she had recused herself from the case and was no longer presiding on the case, Judge Steinhart, without notice and without a Contempt Hearing, issued her Order Re: Contempt Citations (Appendix D).

E. FACTS PERTAINING TO THE MISCONDUCT OF THE GUARDIAN AD LITEM.

On 10/2/85, trial Judge Steinhardt appointed Mary Ray White Guardian Ad Litem ("GAL") for the children of the marriage, during the dissolution proceedings.

On 10/15/85, during the Temporary Orders Hearing and at a critical stage when the trial court determining whether Petitioner could have custody of his sons, the GAL made an oral report to the trial court purportedly based upon her "interviews with the principal and past and present teachers of the children of the marriage, at their school, as well as Dr. Czopek, custody evaluator and Dr. LaCrosse, a psychologist who has seen the parents and the boys, and others." In this report the GAL made statements, allegedly based on her conversations with these people, that Jamie was "more attached to his mother, that he was disheveled and sad at school".

Two of Jamie's former teachers appeared in trial court to impeach the GAL's report and testified: Jamie was "not" sad at school; and they had "not told the GAL that Jamie was sad at school;

they had "not" told the GAL that Jamie was 'more attached to his mother'; and denied that they made statements to the GAL which the GAL had falsely reported to the trial court.

Also, the school principal's testimony did not support the GAL's false report.

Dr. LaCrosse's actual assessment was: "the two older boys were extremely attached to their father and Jamie was attached brothers."; and when Jamie was asked to go to his mother he rebelled; indicating that the GAL also falsely reported to the trial court Dr. LaCrosse's conversation with her.

Mr. James Schauwackers' testimony also indicated that the Gal falsely reported to the trial court.

At this 10/15/85 Temporary Orders Hearing, the GAL gave a detailed report to the trial court regarding her alleged

conversation with the court-appointed custody evaluator, Dr. Czopek. It was subsequently discovered that the GAL had no conversations with Dr. Czopek on or before 10/15/85. After being confronted with the discovery of this fact and her false report during cross-examination in a later Permanent Orders Hearing, the GAL admitted that she had not talked with Dr. Czopek as of 10/15/85, as she had previously falsely reported.

The Respondent's attorney admitted that the GAL conducted over 50 telephone communications with her and with the Respondent. The Gal luncheoned with the Respondent's therapist and the Respondent's attorney.

Despite Petitioner's Motion To Remove the GAL and the cross-examination revealing the GAL's false reports and bias, trial Judge Steinhardt refused to

remove the GAL, prior to the issuance of 4/1/86 Permanent Orders, which separated Jamie Barnthouse's custody from the custody of his brothers, Joe & Jon; prior to the 8/25/86 Removal Order (allowing Respondent to move Jamie out-of-state, away from his brothers Joe, Jon and his father); or prior to the 5/22/86 Order Re: Contempt Citations.

All of the proceedings, hearings and trial court's Orders were tainted and prejudiced by the bias of the GAL's misconduct and false reports against the Petitioner's interest, including the 5/22/86 Order Re: Contempt Citations.

On 12/11/85, Petitioner filed his Motion To Remove The Guardian Ad Litem (dissolution-Perm Order trial court record, Vol.2,p309-318). On 12/20/85, trial judge Joyce S. Steinhardt denied the Motion (dissolution-Perm Order transcript Vol VI,p5,ln24&25;p6,ln1-3).

Petitioner's Opening Brief in the Colorado Court of Appeals detailed the false reports by the GAL (Opening Brief pp 17-22); and detailed the unilateral meeting conducted by the GAL with the Respondent and trial judge Steinhardt, without Petitioner being afforded notice or opportunity to be present (Op Br p 22); and detailed the GAL's exparte communication with the trial judge pertaining to her submitting a draft modified Visitation Order, without notice to Petitioner or his attorney (Op Br pp23 & 50); and asserted that the GAL acted as Respondent's "defacto co-counsel" (Op Br p 50); and requested the GAL's removal and reimbursement of the GAL's fees, due to her misconduct (Op Br. p61).

On 12/22/87, after hearing evidence of the GAL's false reports and admission of her false reports, and of the GAL's 50 telephone communications with the

Respondent and her attorney, and of the GAL's luncheoning with the Respondent's attorney and therapist; trial Judge Thomas Levi, finally removed the GAL Mary Ray White from her Guardian ad litem duties, finding:

> "that Ms. White has become allied with the (Respondent's herein, petitioner-wife below) side of the case...a situation which has existed -- apparently has existed for a long time,..."

F. FACTS PERTAINING TO PETITIONER RAISING VIOLATIONS OF HIS DUE PROCESS AND OTHER UNITED STATES CONSTITUTIONAL RIGHTS IN HIS APPELLATE BRIEF.

Petitioner's Opening Brief in the Colorado Court of Appeals explained that:

> "At no time was there a properly noticed hearing on the contempt charges, at which Bill (Petitioner) could have marshalled his evidence and witnesses with regard to the specific allegation on which the Contempt Order is based.";

and asserted:

"Such findings are inadequate to support the imposition of a sentence to jail. ...The findings of contempt... were made in violation of fundamental due process rights." (Opening Brief page 56;

and noted:

"Bill (Petitioner), on several occasions, attempted to have the two older boys called as witnesses. Judge Steinhardt refused. Regardless of whether or not such a refusal was within her discretion with regard to the issuance of PO (dissolution-Permanent Orders Hearing), it cannot be condoned with regard to the Contempt Order. If Judge Steinhardt intended to issue the Contempt Order based, in whole or in part, upon Bill's alleged disparagement of Terri (Respondent) to the children, his alleged interference with her visitation time and rights, then Bill had an absolute right to call at least the two older boys as witnesses with regard to these matters, since they were the only non party witnesses able to testify as to these allegations." (Opening Brief page 57);

and asserted:

"This demonstrates the vice of not setting aside time for a specific hearing on Contempt citation and also the vice of Judge Steinhardt's ruling thereon."(Opening Brief page 57);

and asserted:

"Alleged repetition by a party witness of what others (the boys) have allegedly told that witness, as proof of the truth

of the matter stated is inadequate to support a jail term, or other sanction. Judge Steinhardt did just that in her findings of contempt. Judge Steinhardt made no findings that the boys were incompetent to be witnesses, nor could she have, based upon this record and particularly the findings of the custody evaluators and the other experts who had interviewed them. The boys, particularly Joe and Jon, were found to be intelligent and expressive." (Opening Brief pp57 & 58).

and noted:

"The Contempt Order should be set aside since it was issued without proper notice and hearing, without consideration of applicable documentary evidence, and without allowing Bill (Petitioner) the opportunity to call the only non-party witnesses who could have responded to the hearsay testimony..." (Opening Brief page 51);

and asserted:

'Where indirect contempt has been charged, as distinguished from contemptuous conduct occurring in the presence of the Court, the respondent (Petitioner in this Petition before the United States Supreme Court) is entitled to notice of the charge, the right to be represented by counsel at the hearing, the right to call and confront witnesses, the right to an adjudication by the court...' (PR v. District Court, 637 P2d 346, 350-351 [Colo 1981]: accord: Losavio v. District Court, 181 Colo 180, 512 P2d 266, 268 [1973]);

and asserted:

> 'due process requires that the accused be accorded notice and a fair hearing' (Op Brief p51);

and noted:

> "the boys were deprived of any opportunity to present their own views" (Op Brief, p41, ln15-25);

and noted the Contempt Order is based:

> "upon a denial of fundamental due process,..." (Op Brief p 58).

G. FACTS PERTAINING TO THE COLORADO COURT OF APPEALS OPINION WHICH AFFIRMS THE LOWER TRIAL COURT BY ADDRESSING MINOR ISSUES, BUT FAILS TO MENTION MAJOR FACTS OR ADDRESS THE REAL SUBSTANTITIVE ISSUES.

Petitioner's Opening Brief in the Colorado Court of Appeals raised major issues regarding the false reports by the GAL, and the denial of a contempt hearing, and denial of due process.

The Colorado Court of Appeals opinion (Appendix B) does not mention these issues: the opinion fails to address the

due process issues raised by Petitioner, fails to mention the lack of a contempt hearing, and fails to mention the GAL's false reports and exparte communications with the trial court.

The Colorado Court of Appeals resolves all issues and objections regarding the GAL by discussing only a single, minor point about whether the GAL "was not following the childrens' wishes" regarding custody, and concludes "His (Petitioner's) contention is without merit." (Appendix B, III.); and then discusses the statutory role of a Guardian ad litem to 'be charged in general with the representation of the child's interest....'.

The Colorado Court of Appeals opinion does not mention the GAL's false reports and the GAL's ultimate admission to the false reports, and does not mention the other misconduct by the GAL which

Petitioner contends biased all proceedings, including the Contempt Order.

Regarding the Contempt Order, the Colorado Court of Appeals opinion (Appendix B, V.) only notes that Petitioner contends that the Contempt Order "was issued without giving him sufficient opportunity to present evidence."; and concludes "We disagree.", by finding that:

> "The evidence relating to the father's (Petitioner's) contempt was elicited at the permanent orders hearing. He attempted to call the children as witnesses, but the trial court denied his request....Here there was ample evidence to support the contempt order, and we will not set it aside because of the court's decision to protect the children from the rigors of testifying."

This opinion by the Colorado Court of Appeals does not address that no contempt hearing was ever afforded, and that the so-called "ample evidence" was not introduced in a properly noticed Contempt

hearing, and no opportunity was afforded to rebut such alleged evidence .

The opinion by the Colorado Court of Appeals fails to grasp or address that the basis of the Contempt Order was the 3/11/85 Temporary Injunction language, which was not in effect at the time of the alleged contempt violation.

V. ARGUMENT & REASONS FOR GRANTING THE WRIT

The Supreme Court of Colorado has impermissibly ignored that the Colorado Court of Appeal erroneously affirmed the trial court by:

(1) totally ignoring and failing to address the fact that the 5/22/86 Order Re: Contempt Citations erroneously cited and relied on the 10/18/85 Contempt Citation's mistaken allegation that Petitioner had violated the language of the 3/11/85 Temporary Injunction, which

language was not in effect and had not been in effect since 3/12/85, when it was superceeded, modified and replaced by trial judge Reed's explicit, written TRO; which 3/12/85 TRO language was drastically different from the 3/11/85 Temporary Injunction language;

(2) erroneously affirming the trial court's denial of Petitioner's due process right and rights to call witnesses and to have a fair hearing and opportunity to rebut with witnesses, based on the trial court's erroneous decision to protect the children from the rigors of testifying in the dissolution-Permanent Orders Hearing; and thereby, erroneously recognizing an alleged power in the trial judge to deny child witnesses in a domestic relations case, when no authority exists for such denial of witnesses; and thereby, committing a more serious error by failing

to distinguish Petitioner's right to due process, to call witnesses, to have a full and fair hearing and opportunity for his witnesses to rebut allegations pertaining to Contempt issues when incarceration was at stake;

(3) ignoring that Petitioner was denied his due process right to a full and fair hearing on the Contempt Citation allegations, when the trial judge issued her 5/22/86 Order Re: Contempt Citations and related incarceration, without noticing or holding a Contempt Hearing; and, without notice, allowing the incomplete temporary-accounting exhibits from the dissolution -Temporary Orders hearing and evidence from the dissolution-Permanent Orders Hearing to count as the contempt evidence, in lieu of holding a properly noticed Contempt Hearing;

(4) ignoring and failing to address the fact that the 5/22/86 Order Re: Contempt Citations was issued by a recused Judge who was no longer presiding over the case, and thus, the Contempt Order was void ab initio; and

(5) totally ignoring and failing to address the misconduct of the GAL, including her false reports and allied, defacto co-counsel assistance to the Respondent, and failing to address the GAL's biased taint which prejudiced all the judicial proceedings, including the Contempt Order; and ignoring that the trial judge allowed the Guardian ad litem to remain in the case and biasedly taint and prejudice the administration of justice in all proceedings, including the 5/22/86 Order Re: Contempt Citations.

The trial court's findings of contempt, and punishment therefor, was

impermissible in the face of (1) documented proof of compliance with the only Temporary Restraining Order (the 3/12/85 TRO - Appendix F) in effect pertaining to financial matters; (2) the trial court's refusal to allow the alleged contemner to present the only available non-party eye- witness testimony to the events which allegedly formed the basis for the contempt-finding; (3) the trial court's failure to notice and hold a contempt hearing; and (4) the trial court's failure to immediately remove the GAL, which allowed her to biasedly taint the proceedings, including the 5/22/86 Contempt Order, before a second trial judge ultimately removed the GAL on 12/22/87 after finding the GAL was "allied" with the Respondent.

The Colorado Court of Appeals opinion sustaining the Contempt Citation was erroneous and relied on setting up and

knocking down minor strawmen issues, while never addressing the main appellate issues; for example ignoring: objections to the GAL's false reports and exparte communications with the trial court and other misconduct; ignoring that a trial judge has no power to exclude witnesses because of the "rigors of testifying"; ignoring that a trial judge has no power to deny witnesses on contempt issues when incarceration is at stake, based on an alleged power to exclude child witnesses in a domestic relations hearing; also, ignoring the trial court's unnoticed reliance on incomplete evidence and unrebutted testimony from some other hearing; and ignoring the lack of a contempt hearing.

Thus, the Colorado Court of Appeals opinion affirmed the lower trial court by setting up and focusing on insignificant-minor issues and finding no error; and by

doing so diverted attention away from the major substantive issues of the appeal, which never got mentioned much less — addressed, including: the gross misconduct of the GAL, the failure of the trial court to hold a contempt hearing, and other violations of due process and rights protected under the United States Contitution.

The Supreme Court of Colorado impermissibly tolerated the Colorado Court of Appeal's clear failure to address the principal appellate issues.

A. PETITIONER'S DUE PROCESS WAS VIOLATED BY A CONTEMPT ORDER AND INCARCERATION SENTENCE WHICH WAS BASED ON INJUNCTION LANGUAGE THAT WAS NOT IN EFFECT.

The Contempt Order denied Petitioner's right to due process by imposing incarceration based on an alleged

violation of an injunction that was not in effect, but the trial judge failed to realize her error because she failed to hold a Contempt Hearing wherein the Petitioner should have been afforded the opportunity to raise the error.

The 5/22/86 Order Re: Contempt Citations was based on alleged conduct by Petitioner which purportedly violated the (not in effect) 3/11/85 Temporary Injunction language with regard to financial matters, and the 11/6/85 Order Re: Motion to Modify Temporary Orders dealing with disparagement of the mother, etc. The record demonstrated with solid documentary evidence that Petitioner did not violate 3/12/85 Temporary Restraining Order (which was the only order regarding financial matters in effect) and that Petitioner provided the required full and complete accounting of his expenditures from the marital estate. The trial court,

the Colorado Court of Appeals, and the Colorado Supreme Court simply ignored this documentation, failing to even mention it.

Since the trial court imposed a gross incarceration sentence upon the father based upon his alleged contemputous disobediance to a requirement which did not exist in Judge Reed's 3/12/85 TRO, at a minimum such sentence cannot be allowed to stand. (See: Griffin v Jackson, __P2d___ Colorado Court of Appeals No. 86 CA 1002, announced July 7, 1988, slip op p 6-7).

B. THIS CASE PROVIDES THIS SUPREME COURT OF THE UNITED STATES WITH AN OPPORTUNITY TO DISTINGUISH THE ALLEGED POWER OF A DOMESTIC RELATIONS JUDGE TO EXCLUDE WITNESSES IN A DOMESTIC RELATIONS HEARING VERSUS IN A CONTEMPT HEARING, WHERE INCARCERATION IS AT STAKE.

Trial judge Steinhardt erroneously excluded the thirteen (13) and twelve (12) years-old boys as witnesses in the dissolution Permanent Orders Hearing, pursuant to her self-fabricated, non-existant power to exclude children as witnesses in a domestic relations case "to avoid the rigors of testifying" (Appendix B). There is no authority to exclude child witnesses or any witnesses because of the "rigors of testifying".

The trial judge never held a Contempt Hearing, but, without notice, relied on the 12/20/85 to 2/6/86 dissolution Permanent Orders Hearing testimony to impose her 5/22/86 Order Re: Contempt Citations; thus, the trial judge thereby also erroneously excluded the boys as witnesses on contempt issues.

However, a separate error occurred when the trial judge never noticed or held a Contempt Hearing.

A trial judge cannot deny a father's right to call the boys as witnesses in a dissolution Permanent Orders Hearing, even if the hearing was solely on domestic relations issues. Trial judge Steinhardt errored when she denied the Petitioner's request to call the boys as witnesses in the dissolution-Permanent Orders Hearing on domestic relations issues. The error is compounded when the judge Steinhardt, without notice, suprises Petitioner, months later, with a Contempt Order and incarceration sentence based on unnoticed testimony in the prior dissolution-Permanent Orders hearing, wherein such Permanent Orders Hearing the children have been prohibited from testifying.

Also, the finding of contempt and the sentence were also based upon an alleged violation of Judge Steinhardt's 11/6/85 Order that Petitioner not disparage Respondent to the boys. The major alleged

instance of such violation allegedly occurred in the presence of the two older boys. The trial court refused to allow Petitioner to call the boys as witnesses. This refusal was not even within the trial court's discretion on domestic relations matters; and most clearly the trial court could not find Petitioner in contempt and sentence him, inter alia, to incarceration without giving him an opportunity to present his defense witnesses.

The desire to prevent children "from the rigors of testifying" (Colorado Court of Appeals opinion p 5; App B,p10) may be commendable, but when a trial court has denied a person the right to present his defense that trial court cannot sentence him for alleged conduct as to which he was denied such right.

Whether or not Petitioner gets to call witnesses or gets a Contempt Hearing cannot be based on the length of the

chancellor's foot, or on non-authorized refusals to allow witnesses based on self-fabricated reasons that have no precedent in statute or case law.

The Contempt Order and the Sentence imposed were violations of the United States Constitution, since they were imposed contrary to the evidence, without opportunity to call essential witnesses and without a specific hearing thereon.

C. THE TRIAL JUDGE VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY DEPRIVING HIM WITNESSES ON CONTEMPT ISSUES WHERE INCARCERATION WAS AT STAKE, BY WRONGFULLY RELYING ON HER ALLEGED POWER TO EXCLUDE WITNESSES IN A DOMESTIC RELATIONS HEARING.

The trial judge impermissibly denied the Petitioner's due process rights to a full and fair Contempt Hearing and right to call witnesses regarding contempt issues, when she (1) failed to hold a

Contempt Hearing, and did not allow Petitioner to rebut the Contempt Citations and call the boys or any witnesses; and (2) when she impermissibly considered testimony from the dissolution Permanent Orders Hearing for purposes of finding Petitioner in contempt, without a separate Contempt Hearing, and without allowing the boys to testify in the Permanent Orders Hearing on either dissolution issues or contempt issues; and the trial Judge, thereafter issued her 5/22/86 Order Re: Contempt Citations.

The boys were critical witnesses regarding the expenditure of marital funds relating to the 10/18/85 Contempt Citation allegations, since certain of the funds belonged to the boys and were used for their expenses, including their private school tuition. The boys were the only non-party witnesses regarding the hearsay allegations pertaining to the 11/26/85

Contempt Citation alleged violation of the 11/6/85 Order.

The trial judge erroneously relied on the Respondent's hearsay Contempt Citation affidavits alleging violations of a Temporary Injunction, but would not allow Petitioner to call witnesses to rebut the hearsay, thereby violating due process requirements by permitting proof of contumacious conduct by affidavits and thereby depriving the alleged contemnor of the constitutionally guaranteed right to confront and cross-examine the witnesses against him. Harriet Cotton Mills v. Textile Workers Union, 251 NC 218, 111 SE2d 457, 79 ALR2d 646, cert den 362 US 941, 4 Led2d 770, 80 S Ct 806. An alleged contemnor is entitled to the right to call witnesses. Re Petitioner for Green, 369 US 689, 8 L ed 2d 198, 82 S Ct 1114; Re Chaifetz (Mun Ct App Dist Col) 68 A2d 228; Weiss v. Jacobs, 405 Pa 390, 175 A2d 849.

The trial judge had no power to deny the Petitioner's request to call the boys as witnesses in a domestic relations case. A child who is competent under the general rules relating to children as witness is a competent witness in an action for divorce. Weissenberger v. Weissenberger (Ala App) 367 So 2d 485; Kreutzer v. Kreutzer, 226 Or 158, 359 P2d 536. The domestic relations trial court is not warranted in excluding children as witnesses in a divorce case for reasons other than those warranting exclusion generally. Hepler v. Hepler, 195 Va 611, 79 SE2d 652; Kreutzer v. Kreutzer, supra.

More seriously, the trial judge certainly had no power to deny the Petitioner's request to call the boys as witnesses on contempt issues, especially when the boys were the only non-party witnesses able to rebut the Contempt Citations. The rule on not restricting the

testimony of children applies with particular force where the need for calling the child to testify is imperative; public policy or private views of propriety do not justify a refusal to listen to competent testimony of young children where there is a need for such testimony. Bole v. Bole, 76 Cal App 2d 344, 172 P2d 936; Ames v. Ames, 231 Mich 347, 204 NW 117; Kreutzer v. Kreutzer, supra.

The trial judge violated Petitioner's due process rights by issuing the 5/22/86 Order Re: Contempt Citations and imposed incarceration, without allowing the boys to appear as witnesses on contempt issues.

The only way a trial judge could have legally precluded the boys from testifying would have been to find them incompetent. The trial judge did not test the boys competency to testify; therefore, she had no basis to preclude their testimony. In

fact, there was no reason to question the boys competency to testify, because when the trial judge interviewed the boys in the dissolution Permanent Orders hearing regarding only custody issues she found them to be "handsome and verbal". They informed the Court that they were 'more comfortable with their father (Petitioner),...'. The trial judge never attempted to find the boys competent or incompetent to testify. The trial judge never attempted to disqualify the boys on contempt issues.

The denial of witnesses violated the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

D. PETITITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY A CONTEMPT ORDER AND INCARCERATION ISSUED WITHOUT NOTICE AND WITHOUT A CONTEMPT HEARING BEING HELD.

Separate error occurred when the rial judge failed to hold a Contempt earing, but issued the 5/22/86 Order Re: ontempt Citations. The trial judge rred by relying on hearsay testimony from he dissolution Permanent Orders Hearing o hold Petitioner in Contempt and impose ncarceration. By failing to notice and old a separate Contempt Hearing, etitioner was never afforded an pportunity to rebut witnesses (the espondent's affidavit) and present his itnesses, including the boys, to rebut he Respondent's hearsay testimony, which as the sole basis for the Contempt inding regarding the alleged violation of he November 6, 1985 Order not to isparage the Respondent and not to nterfer with her visitation.

Also, the lack of a Contempt Hearing reated a situation where the trial court ever realized that she based the Contempt

Order on the 3/11/85 Temporary Injunction language, which was not in effect.

The denial of a separate Contempt Hearing violated Petitioner's right to confront his accuser-Respondent and confront witnesses.

Also, The trial judge relied on incomplete dissolution-Temporary Orders accounting, instead of the final dissolution-Permanent Orders hearing full accounting; and since there was no Contempt Hearing, Petitioner was denied his due process right to a full and fair hearing, where he should have had the opportunity to point out the trial court's mistaken reliance on the wrong accounting and wrong Temporary Injunction language that was not in effect.

Petitioner's Opening Brief page 51, in the Colorado Court of Appeals cited Johnson v. Mississippi, 403 US 212, 91 S Ct 1778, 29 Led 2d 423 [1971]) to support his

argument that 'due process requires the accused be accorded notice and a fair hearing'.

> "An appropriate regard for the orderly judicial process requires that parties be given a fair opportunity to pass on points critical to their cases." Rivera v. Gerner, 89 NJ 526, 446 A2d 508, 514 (1982).

Due Process of law is to be observed in contempt proceedings in which ample specification of the charges, adequate notice to prepare a defense, and a full opportunity to present such defense are to be afforded. Blankenburg v. Commonwealth, 272 Mass 25, 172 NE 209. A contempt hearing is necessary. Ex parte Ratliff, 117 Tex 325, 3 SW2d 406; Cooke v. United States, 267 US 517, 69 L ed 767, 45 S Ct 390; Welch v. Barber, 52 Conn 147; Carson v. Ennis, 146 Ga 726, 92 SE 221; Rothschild & Co. v. Steger & Sons Piano Mfg. Co. 256 Ill 196, 99 NE 920; Shattuck v. State, 51 Miss 50;

Re Clark, 208 Mo 121, 106 SW 990; Yates v. Lansing, 9 Johns (NY) 396; Ex parte Ratliff, 117 Tex 325, 3 SW2d 406, 57 ALR 541; Ex parte Mylius, 61 W Va 405, 56 SE 602. A full plenary hearing on contempt is required under the Federal Rules of Criminal Procedure and the Colorado Rules of Criminal Prodedure. Panico v. United States, 375 US 29, 11 Led2d 1, 84 S Ct 19.

The denial of a Contempt Hearing violated the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

E. THE TRIAL JUDGE VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY ISSUING A CONTEMPT ORDER AND INCARCERATION AFTER THE JUDGE RECUSED HERSELF AND WAS NO LONGER PRESIDING OVER THE CASE.

Trial judge Joyce S. Steinhardt recused herself from the case on 5/19/86 (Appendix C); thereafter on 5/22/86, she issued the Order Re: Contempt Citations.

The subject Contempt Order was void ab initio. It is fundamental that a judge not presiding on a case and without a Contempt Hearing has no power to Order.

F. THIS CASE PROVIDES THE COURT WITH AN OPPORTUNITY TO LIMIT PREJUDICE TO THE ADMINISTRATION OF JUSTICE BY A GUARDIAN AD LITEM IN JUDICIAL PROCEEDINGS, AND TO PREVENT A GUARDIAN AD LITEM FROM ACTING AS AN ALLIED DEFACTO CO-COUNSEL FOR ONE PARENT OF THE CHILDREN.

Bias and prejudice to the administration of justice by certain Guardian ad litems in domestic relations cases are a national legal disgrace. This case provides an opportunity to set limits on what conduct will not be tolerated from a Guardian ad litem, who is appointed and supposed to be representing the interests of children in domestic relations cases.

The facts in the subject case regarding the misconduct of the court-appointed GAL Mary Ray White indicate impermissible conduct, constituting a prejudice to proceedings and a denial of a fair hearing. GAL Mary Ray White's misconduct must be deemed impermissible; including her false reports to the trial court; false detailed reports of conversations with custody evaluators, which never took place; and her allied defacto-co-counsel representation of the Respondent, to the extent a second trial judge removed her from her GAL duties.

A ruling from the Supreme Court of the United States is needed to delineate that such biased conduct will not be allowed to prejudice due process rights to fair, untainted proceedings. A message that such conduct is impermissible will begin to set a long needed standard to guide the conduct of future Guardian ad

litems and lower courts regulating their behavior.

G. THE FALSE REPORTS AND ALLIED CONDUCT OF THE GUARDIAN AD LITEM AND HER FEES PREJUDICIALLY TAINTED THE PROCEEDINGS, INCLUDING THE MAY 22, 1986 ORDER RE: CONTEMPT CITATIONS.

The Supreme Court of Colorado ignored that the Colorado Court of Appeals erred in its review of the GAL issues.

The GAL prejudiced the administration of justice and the proceedings, including the Contempt Order when she failed to make honest and unbiased reports to the trial court; and the trial judge condoned the prejudice by failing to remove the GAL upon notice of her false reports and improper allied-defacto co-counsel representation of the Respondent.

This Supreme Court of the United States has the opportunity to define the

proper function and duties of a GAL in a contested custody case, and the duty of the trial court when faced with a GAL's improper performance.

The Colorado Court of Appeals opinion (Appendix B) misstated the actual issues raised and set up minor strawmen issues, while ignoring and failing to address major issues and objections. The primary thrust to support Petitioner's claim that the GAL should have been removed sua sponte was that the GAL had misled the Court. The trial court, the Court of Appeals, and the Supreme Court of Colorado all ignored the undisputed evidence of the GAL's misleading statements to the trial court, when the trial court found that the GAL had properly performed her duties and the Court of Appeals said, "The record supports these findings." (Appendix B, page 8, ln 13 & 14). This is simply inaccurate.

The Colorado Court of Appeals opinion set up a strawman by focusing only on the insignificant minor issue that: "The father also contends that the trial court should have removed the children's attorney sua sponte because she was not following the children's wishes." (App B,p 3). Nowhere did the Petitioner argue that the wishes of the children should be the controlling factors in the GAL's recommendation. This misstatement set up a strawman. It ignored main issues: the GAL"s false reports & other misconduct.

A major authority cited by the Court of Appeals (Note, Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising From Divorce, 87 Yale L.J. 1126 (1978) does not support the position taken by the Colorado Court of Appeals. The record shows the GAL here did not follow requirements for a GAL (who is supposed to be representing

the children) to report honestly, in good faith, and without bias and misconduct, and not as the allied defacto-co-counsel for one of the Parties.

The strawman issue set up by the Colorado Court of Appeals opinion totally ignores and diverts focus from the misconduct of the GAL, by failing to address the false reports by the GAL and her allied defacto-co-counsel representation of the Respondent.

D. THE COLORADO COURT OF APPEALS OPINION AFFIRMED THE TRIAL COURT BY SETTING UP MINOR-INSIGNIFICANT STRAWMEN ISSUES AND KNOCKING THEM DOWN, BUT FAILS TO MENTION THE REAL MAJOR-SUBSTANTITIVE ISSUES.

The Colorado Court of Appeal's opinion (Appendix B) affirms the trial court by merely setting up insignificant strawmen issues on minor matters, and

knocks them down; while ignoring and failing to mention the real major-substantive issues raised in the appeal.

The Colorado Court of Appeal's opinion fails to note that a GAL's role does not include false reports and biased representation of one of the Partys (Respondent) against the other Party (Petitioner). The opinion does not address the false reports and biased taint caused by the GAL in the proceedings, including the Contempt Order.

The Colorado Court of Appeal's opinion fails to grasp that since the Contempt Order was based on "evidence elicited at the permanent orders hearing", Petitioner was denied due process, and his right to confront his accuser and witnesses in a properly noticed Contempt Hearing; and Petitioner was denied a fair hearing and opportunity to rebut the Contempt Citations and Affidavits and

opportunity to call his own witnesses; and there is no power in a trial judge to exclude the children as witnesses because of the "rigors of testifying", and such exclusion was a violation of Petitioner's right to call witnesses.

VI. CONCLUSION

This case deserves consideration by this Supreme Court of the United States, acting in its capacity to uphold due process by condemning the practice of lower courts from: failing to hold a properly noticed Contempt Hearing; wrongfully denying witnesses; and then using phrases like "there is ample evidence" (from an unnoticed prior non-contempt hearing) when there was no such evidence in the record to support a Contempt Order, based on Injunction language not in effect at the time of the alleged violation; and from masking the

real issues by setting up minor strawmen issues, knocking them over and ignoring major issues and misconduct.

The record, contrary to the assertion of the Colorado Court of Appeals does not support the result reached nor the 6/16/88 opinion of The Colorado Court of Appeals.

Findings, "...must be so explicit as to give the Supreme Court of Colorado or Supreme Court of the United States an opportunity to determine on what ground the trial court reached its decision, and whether that decision was supported by competent evidence." Hipps v. Hennig, 167 Colo 320, 447 P2d 700, 703 (1968). That standard was not met here by either the trial court or Colorado Court of Appeals, and was not properly imposed by the Colorado Supreme Court in this case.

The case presents this Supreme Court of the United States with the opportunity to establish guidelines for hearing

procedures, as well as the requirements for findings and punishment for contempt, and for the conduct of Guardian ad litems and the trial courts that are supposed to regulate GALs' behavior.

The trial court's Contempt Order, and the Colorado Court of Appeals and Colorado Supreme Court's opinions are contrary to the U. S. Constitution and its Amendments.

This Supreme Court of the United States should grant the Petition and allow a full briefing and oral argument on the merits of this case.

Respectfully submitted Feb. 22, 1989.

William J. Barnthouse,
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Appendix A

SUPREME COURT, STATE OF COLORADO
CASE NO. 88SC403
CERTIORARI TO THE COLORADO COURT OF APPEALS,
#86CA0989, #86CA1452 & 87CA54
ARAPAHOE COUNTY DISTRICT COURT, #85DR374

ORDER OF COURT

In re the Marriage of :

WILLIAM BARNTHOUSE, Petitioner,

vs.

TERESA BARNTHOUSE, Respondent.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS FURTHER ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 28, 1988.

APPENDIX B

No. 86CA0989
No. 86CA1452
No. 87CA0054

In re the Marriage of

Petitioner,

and

Respondent,

and concerning

Intervenor.

Consolidated Appeals from Jefferson County Court

Honorable [illegible], Judge

Division II. Filed [illegible]

[illegible]

Attorney for Petitioner

Attorney for Respondent

Attorney for Intervenor

Dissolution of Marriage - Child Custody

This is a consolidated appeal from three trial court orders entered in a dissolution of marriage action. We affirm.

I.

William Barnthouse (father) first contends that the court abused its discretion when it divided the custody of

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the parties' three children, awarding

After a through and extensive recitation of the findings of fact, the trial court [illegible] (emphasis [illegible] Marriage of Tinney, 654 P.2d 1178, 1180, App. 1982).

II.

The father's contention that he was [illegible] the process of the hearing was also without merit, while neither of the parents [illegible] addressed at the permanent orders hearing

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the possibility of separating the children, which presented extensive evidence and [illegible] with respect to the child's needs and interests. [illegible] process were met.

II.

Father next argues that the trial court abused its discretion by granting the mother's motion to move out of state with the parties' child. We disagree.

The question whether a child may be removed from the state is for the trial court's discretion, Hayes v. Hayes, 194 Colo. 114, 570 P.2d 238 (1977), and the court's determination will not be set aside if it is based on the child's best interests. In re Marriage of McGee, 44 Colo. App. 320, 613 P.2d 340 (1980).

Here, the record showed that the move would serve the child's well-being and

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future interests. Therefore, we will not set aside the order. See In re Marriage of McGee, supra.

IV.

The father also contends that the trial court should have removed the children's attorney sua sponte because she was not following the children's wishes. His contention is without merit.

In a dissolution of marriage action an attorney may be appointed "to represent the interests of a ... child with respect to his custody, support, and visitation." Section 14-10-116, C.R.S. (1987 Repl. Vol. 6B). See also C.R.C.P. a7 (c).

The relationship between an attorney and a child is not the same as that between an attorney and an adult client. See generally Note, Lawyering for the Child: Principles of Representation in

Custody and Visitation Disputes Arising From Divorce, 87 Yale L.J. 1126 (1978). The purpose of an appointed attorney in a custody dispute is to determine and recommend those available alternatives which are in the best interests of the child. Section 14-10-116, C.R.S. (1987 Repl. Vol. 6B).

When a statute gives a court the power to appoint an attorney for children in custody disputes, that advocate must represent the children's interest alone. In so doing, the attorney is not to take a passive role but should present all evidence available concerning the child's best interests. The attorney is not simply to parrot the child's expressed wishes. In re Marriage of Kramer, 177 Mont. 61, 580 P.2d 439 (1978). Thus, this obligation imposes a higher degree of objectivity on a child's attorney than

(Appendix B continued, page 7):
that for an attorney representing an adult.

Although section 14-10-116, C.R.S. (1987 Repl. vol. 6B) does not enumerate the attorney's obligations with specificity, in this case the attorney for the children performed functions substantially similar to those imposed on guardians ad litem appointed under section 19-10-113 (3), C.R.S (1986 Repl. Vol. 8B) of the Children's Code.

That statute provides:

"The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses...and may

introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child."

Here, the trial court allowed the attorney to call witnesses, to investigate, to report and make recommendations, and specifically found that she has performed her duties in a careful, professional, and unbiased manner. The record supports these findings. Moreover, in making its custody determination, the trial court considered several factors in addition to the recommendation of the children's attorney. The court conducted its own interview of the children, ordered a report from a custody evaluator, heard conflicting testimony from three experts, and presided

over eight full days of trial. Thus, we cannot say that the trial court abused its discretion in considering the attorney's conduct of the case or in calculation. We now decide the father's contention that the court abused its discretion when it ordered him to pay a portion of the fees for the childrens' attorney.

V.

The father next contends that the order awarding fees to the guardian ad litem was void because the court refused to grant him a continuance without giving him a reasonable opportunity to present evidence. We disagree.

The evidence relating to the father's contempt was elicited at the permanent orders hearing. He attempted to call the children as witnesses, but the trial court denied his request.

(Appendix B continued, page 10):

A trial court's finding of contempt will not be disturbed on appeal absent an abuse of discretion. [illegible] In the instant case, there was [illegible] to support the contempt order, and [illegible] to set aside the ruling of the court's decision to protect the jury from the rigors of testifying.

In this case, the trial judge had no [illegible] to recuse herself from the contempt hearing. The trial judge did not initiate the sequence of the litigation, and was selected by Rueland's contemptuous behavior only in a judicial capacity. See Barthuli v. District Court, 178 Colo. 118, 495 P.2d 539 (1972).

VI.

In light of the record, we find no error in the court's conclusions that the father was responsible for the depletion of the marital estate, and that he was voluntarily earning less than he was capable of earning. Therefore, there is no merit to the father's contention that the property division, child support award, and maintenance awards are erroneous.

Judgment and orders affirmed.

JUDGE STERNBERG and JUDGE HUME concur.

APPENDIX C

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO

Case No. 85DR374, Division 6

---

transcript of oral Recusal Order, wherein trial judge Joyce S. Steinhardt recuses herself from the case.

5/19/86 dissolution-Permanent Orders hearing transcript Vol.XV, page 81

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

5/19/86 dissolution-Permanent Orders hearing transcript Vol.XV, page 81, lines 1-25:

Judge Joyce S. Steinhardt:

"The Court will today call the Department of Social Services...and will certify this over to the juvenile court...there are several other motions....I'm going to allow the juvenile court make the determination....I'll lose jurisdiction on those issues unless the court sends it back. —I think that takes care of every motion."

page 84, lines 7-11:

"--once I state the Department of Social Services and the juvenile court need to get involved, I lose jurisdiction. I don't have the power to deal with the letter, I don't believe."

page 96, lines 12 &13:

"The matter is certified to the juvenile court.

DATE: May 19, 1986.

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APPENDIX D

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO

Case No. 85DR374, Division 6

ORDER RE: CONTEMPT CITATIONS

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

THIS MATTER COME ON for hearing on Petitioner's motions for Contempt Citations issued October 18, 1985, and November 26, 1985. The Court has heard evidence, reviewed the record, taken judicial notice of its file, and heard statements and arguments of counsel, and is now prepared to rule.

The Court finds the Respondent was properly served with the Contempt Citations. The Court advised the Respondent of his right to have an attorney represent him for these contempt hearings and a right to have time to determine whether he wished to be represented by counsel. The Respondent orally waived counsel.

During the hearing on Permanent Orders, the Petitioner presented evidence in support of her motions for contempt.

The Contempt Citation issued on October 18, 1985, alleges as follows: On March 12, 1985, the Respondent was personally served with a Summons for Dissolution of Marriage, which contained the Temporary Injunction enjoining the Respondent from transferring, encumbering, concealing, or in any other way disposing

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(Appendix K continued, page 7):

Joan; Respondent, pro se; G.A.L., Mary White.

SWORN: William Barnthouse.

ADMITTED: Petitioner's Exhibits 18 and 20. Respondent's Exhibits DDD, EEE, UU, FFF, GGG, HHH.

ORDER: Matter continued until February 6, 1986, at 9:00 a.m.

BEDR374

2/6/86

JES

In re the Marriage of Theresa and William Barnthouse Permanent Orders. TRIAL TO THE COURT. (continued) PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L., Mary White.

SWORN: Theresa Barnthouse and William Barnthouse.

ADMITTED: Exhibits 21 and 22 and E: Exhibits FFF and G.A.L.'s Exhibit D4.

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(Appendix F continued, page 9):

Summations presented by G.H.L., Counsel for Petitioner and Respondent.

ORDER: MATTER TAKEN UNDER ADVISEMENT.

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APPENDIX L

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR374

MINUTE ORDER 4/28/86

SETTING CONTEMPT CITATION FOR 5/19/86

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

85DR374

4/28/86

JSS

In re the Marriage of Theresa and William Barnthouse Setting. Per telephone call from Jacqueline St. Joan,

ORDER: Contempt-Citation set for May 19, 1986, at 2:00 p.m.

Joyce S. Steinhardt

District Judge

APPENDIX M

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR374

MINUTE ORDER 5/13/86

ELIMINATES 5/19/85 CONTEMPT HEARING AND SETS OTHER MATTERS TO BE HEARD INSTEAD ON 5/19/86

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

85DR374

5/13/86

JSS

In re the Marriage of Theresa and William Barnthouse Motions Hearing. BY TELEPHONE: Counsel for Petitioner, Jacqueline St. Joan; Respondent, pro se; G.A.L., Mary Ray White.

(Appendix M continued, page 2):

ORDER: On May 19, 1986, the following will be heard:

1. Motion to Release Evaluation to Therapist

2. Starting Thereapy

3. Motion for Continuation fo Temproary Restraining Order

4. Motion for Attorney Fees

5. G.A.L.'s Motion to Amend or Modify

ORDER: Request for Procedural Order Granted. Motion for Order under Rule 70 and Request for Order Restricting Sale TAKEN UNDER ADVISEMENT Motion for Protective Order Denied.

Joyce S. Steinhardt

District Judge

APPENDIX N

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR374

MINUTE ORDER 5/19/86

PERTAINING TO THE 5/19/86 HEARING ON THE MATTERS LISTED IN THE 5/13/86 MINUTE ORDER

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

85DR374

5/19/86

JSS

In re the Marriage of Theresa and William Barnthouse Motions Hearing. PRESENT: Petitioenr with counsel, Jacqueline St. Joan; Respondent, pro se; G.A.L., Mary Ray White.

SWORN: Barbara Quade, Jacqueline St. Joan, Teresa Barnthouse and William Barnthouse.

ADMITTED: Petitioner's Exhibits III and JJJ and Respondent's Exhibits 23 and 24.

ORDER: 1. Motion to Dismiss Motion for Attorney Fees Denied.

2. Motion for Attorney Fees Granted. Respondent shall pay to Petitioner's Attorney the total sum of $18,000, purusant to C.R.S. 14-110-119. Miss St. Joan to prepare the Order.

3. Motion for Permanent Restraining Order Denied for lack of juisdiction.

4. Parties to exchange personal prop. within 15 days. 5. Motion for Stay Denied. 6. Motion for Release of Evaluation to Therapist Deferred pending Evaluation by the ACDSS. 7. Motion Re: Children's Therapist Deferred pending Evaluation by the ACDSS. 8. Request of

(Appendix N continued, page 3):

Emendation of Order by the G.A.L. is Deferred pending Evaluation by the ACDSS.]

9. Hearing held re: trip to California. ORDER: The Court has ordered that the ACDSS investigate the matter of probable emotional abuse to the children. The Court further orders as a matter of protection for the children that the children not be removed from the State of Colorado by either party. 10. Alias Citation to issue.

Joyce S. Steinhardt

District Judge

Appendix O

SUPREME COURT, STATE OF COLORADO
CASE NO. 88SC403
CERTIORARI TO THE COLORADO COURT OF APPEALS,
##86CA0989, 86CA1452 & 87CA54
ARAPAHOE COUNTY DISTRICT COURT, #85DR374

ORDER OF COURT

In re the Marriage of :

WILLIAM BARNTHOUSE,

Petitioner,

vs.

TERESA BARNTHOUSE,

Respondent.

Upon consideration of the Motion to Reconsider Order of Court or Motion for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Motion shall be, and the same hereby is STRIKEN pursuant to C.A.R. 54 (b).

BY THE COURT, DECEMBER 16, 1988.

APPENDIX P

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO

Case No. 85DR374, Division 6

---

transcript of 12/20/85 oral Order by trial judge Steinhardt continuing the Contempt Citation hearing.

12/20/85 dissolution-Permanent Orders hearing transcript Vol.VI, page 112,ln9-11

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

12/20/85 dissolution-Permanent Orders hearing transcript Vol.VI, page 112,ln9-11:

Judge Joyce S. Steinhardt:

"...on the issue of the contempt citation, which I had not previously thought about...that matter will be continued..."

DATE: December 20, 1985.

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1989

NO.

WILLIAM BARNTHOUSE,

PETITIONER,

vs.

TERESA BARNTHOUSE,

RESPONDENT.

PROOF OF SERVICE

William J. Barnthouse, after being duly sworn, disposes and says that pursuant to Rule 28.5 (b) of this Court he served the within Petition for Writ of Certiorari on counsel for the Respondent by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

Sandra J. Pfaff, Esq.
1732 Pearl Street
Denver, Colorado 80203; and on
(Respondent's attorney)

Mary Ray White, Esq.
5353 W. Dartmouth Ave., Suite 599
Lakewood, Colorado, 80227

(removed as Guardian ad litem)

Joyce S. Steinhardt, Judge, and the
Eighteenth Judicial District, and the
State of Colorado
Arapahoe Justice Center
7325 South Potomac
Englewood, Colorado 80112

and depositing same in the United States mails at Denver, Colorado, on February _____ , 1989.

William J. Barnhouse

County of Arapahoe)
) ss.
State of Colorado)

Subscribed and Sworn to Before Me this 22ND day of February, 1989.

Kristy F. Pankow
Notary Public in and for Said
County and State

KRISTY F. PANKOW
Notary Public, Arapahoe County, CO
My Commission Expires January 14, 1990

APPENDIX H

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR174

In re the Marriage of:

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

DATE:

11/13/85

JSS

In re the Marriage of Teresa Barnthouse and William Barnthouse Pre-trial Conference. PRESENT: Jacqueline St. Joan, counsel for Petitioner; Respondent

BEST AVAIL

with counsel Michael Bender, and Mark White.

ORDER: Mr. Bender's Motion to Withdraw is denied until substitution of counsel is available on the Permanent Order dates of December 19 and 20, 1985.

ORDER: Respondent's Motion for Continuance is DENIED.

ORDER: Mr. Bender is to put his trust account money from Mr. Barnthouse into the Registry of the Court. The console funds are also to be deposited into the Registry of the Court.

ORDER: Counsel are to go through the witness lists to delete any witnesses who would be cumulative.

ORDER: Parties may not attach hearsay documents to their financial affidavits without a stipulation as to the documents. All stipulations are to be reduced to writing and signed by the parties.

ABLE COPY

ORDER: Parties are to have a 5-way settlement conferece to settle issues.

ORDER: Court accepts the Respondent's stipulation as to the authenticity of the financial records.

Joyce S. Stienhardt

District Judge

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO

Case No. 85DR574, Division 6

CITATION

In re the Marriage of:

TERESA BARNTHOUSE, Petitioner,

and

WILLIAM BARNTHOUSE, Respondent.

THE PEOPLE OF THE STATE OF COLORADO, TO THE MANAGER OF SAFETY, AND EX-OFFICIO SHERIFF OF THE COUNTY OF ARAPAHOE AND THE SHERIFF OF ANY OTHER COUNTY IN THE STATE OF COLORADO, GREETINGS:

WHEREAS, in certain cause in said Court no pending, wherein TERESA BARNTHOUSE is Petitioner and WILLIAM BARNTHOUSE is Respondent, certain orders was entered pursuant to the dissolution of the marriage of the parties,

and whereas it appears to the Court from the motion and affidavit in support thereof, a copy of which is hereby attached that Respondent has failed to comply with said orders;

THERES ARE THEREFORE TO COMMAND YOU that y;ou cite and give notice to the said WILLIAM BARNTHOUSE to appear before the Honorable Judge Steinhardt on the 19 day of December, 1985 at the hour of 9:30 a.m., to show cause if any he has why he should not be punished for contempt. for neglect and refusal to comply with the order the court heretofore entered and that, to vindicate the dignity of the court, a fine or imprisonment may be imposed upon him.

STATE OF COLORADO)

) SS

County of)

BEST AVA

Appendix I for Exhibit F-AB 3

WITNESS, Clerk of our said court and the seal thereof hereunto affixed, at the Courthouse, Littleton, Colorado, this 26 day of November, 1985.

Eileen M. Manning

CLERK OF THE DISTRICT COURT

2069 Littleton Blvd.

Littleton, Colorado 8010

Deputy Clerk

AILABLE COPY

APPENDIX J

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR374

MINUTE ORDER 10/23/85

PERTAINING TO THE 10/23/85
DISSOLUTION-TEMPORARY ORDERS HEARING

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

85DR374

10/23/85

JSS

In re the Marriage of Theresa Barnthouse and William Barnthouse Motion to Modify Temporary Orders (continued). PRESENT: Petitioner with counsel Jacqueline St.

Joan, respondent with counsel Michael Bender; Mary White, GAL.

ORDER: Motion to Quash Subpoena of Dr. Frey is GRANTED without prejudice, except as to the issue of authenticity of his report.

SWORN: Joanne Dietrich; Shirley Shepherd; Lonn Kopit; Edwin LaCrosse; Theresa Barnthouse. ADMITTED: Petitioner's A1,B,C,J,V

ORDER: Matter is continued until October 31, 1985 at 9:30 a.m.

Joyce S. Steinhardt

District Judge

APPENDIX K

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Civil Action No. 85DR374

MINUTE ORDER 12/21/85 - 2/6/86

PERTAINING TO THE 12/21/85 - 2/6/85
DISSOLUTION-PERMANENT ORDERS HEARINGS

In re the Marriage of:

TERESA BARNTHOUSE,

Petitioner,

and

WILLIAM BARNTHOUSE,

Respondent.

85DR374

12/20/85

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L. Mary White.

SWORN: Dr. Cogan and Dr. LaCrosse

ORDER: Hearing continued until December 31, 1986 (sic, 1985), at 9:00 a.m.

85DR374

12/31/85

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L.Mary White.

SWORN: Dr. Cogan and Mary White.

ADMITTED: Plaintiff's Exhibits OO,PP,QQ,RR,SS,TT,UU; Defendant's Exhibits 4,5,6.

ORDER: Matter continued until January 6, 1986, at 9:00 a.m.

85DR374

1/6/86

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se: G.A.L.Mary White.

SWORN: Linda Quinn, Theresa Barnthouse, Michael John Jones, Linda Tycer, and James Schauweeker..

ADMITTED: EE, HH, II, JJ, KK, LL, BB, gg, oo, VV,XX,WW YY, AA,z,yy,zz,CC,DD, and RR, W. W1,X,X1.

ORDER: Hearing continued until January 23, 1986, and January 30, 1986.

BSDR374

1/23/86

JBS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St.

Joan; Respondent, pro se; G.A.L.Mary White.

ORDER: Hearing is vacated due to death in the family. Matter is re-se for January 30, 1986.

85DR374

1/30/86

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L.Mary White.

SWORN: Dr. K. Steinhardt, Dr. Richard Waite, James R. Murray, Mary White.

ADMITTED: Petitioner;s Exhibits G,A,I,D,ZZ and AAA; Respondent's Exhibits 7,9,10,11, and 12.

ORDER: Motion for Children to see additional therapist DENIED. There being

(Appendix K continued, page 5).

an objection to G.A.L. fees, a hearing will be necessary.

ORDER: Transcript of Temporary Orders is received.

ORDER: Hearing is continued until February 3, 1986, at 9:00 a.m.

85DR374

1(sic 2)/3/86

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L., Mary Rae White.

SWORN: Mary Rae White, Richard Waite, Theresa Barnthouse, and Terry King.

ADMITTED: Amended C-3, 13, 14, 16.

ORDER: Hearing is continued until February 4, 1986, at 9:00 a.m.

85DR374

2/4/86

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St. Joan; Respondent, pro se; G.A.L., Mary White.

SWORN: Theresa Barnthouse.

ADMITTED: Exhibits BBB and 17 and 18.

ORDER: Check endorsed by Mr. Barnthouse from Conoco si to be placed in an interest bearing account in the Court Registry. It is not to be dispersed until an Order from the Court is issued.

85DR374

2/5/86

JSS

In re the Marriage of Theresa and William Barnthouse Permanent Orders. PRESENT: Petitioner with counsel Jacqueline St.

2) restrained from removing the minor child or children of the parties, if any, from the state without the consent of the other party or an order of the court.

11 March 1985 PFAFF & ST. JOAN

JACQUELINE ST. JOAN (#8457)
Attorney for Petitioner
1321 Elati Street
Denver, Colorado 80204
(303) 534-3537

WAIVER AND ACCEPTANCE OF SERVICE__Civilian
__Military

I declare under oath that I am the Respondent in this case; that I received and accepted service of the summons and petition in this case; that I waive any other service, and consent to the

jurisdiction of this court to determine all issues raised in the pleadings as if I were served by personal service within the State of Colorado.

___I am not in military service. This wiver of service is not to be construed as an admission by me of the truth of the allegations in the petition and I reserve the right to receive notices of settings and the right to respond and appear in person is I wish.

___I am in the active military service in teh United States of America. After consultation with the base legal officer or other counsel of my choice. I waive the provisions of the Soldier's and Sailor's Relief Act of 1942, as amended, including my right to court appointed counsel, and permit the action to proceed without further notice to me.

BEST AVAILABLE COPY

Date Signature of Respondent

Signed under oath before me on _____

_____ _____

Notary Public Address

My commission expires: _____

_____

RETURN OF SERVICE

State of)

) ss.

County of)

I declare under oath that I served this summons and a copy of the petition in this case on the respondent in _____ County on the _____day of _____, 198 , at the hour of _____.m., at the following location:

___By handing it to a person identified to me as the respondent.

___By leaving it with the respondent who refused service.

___By leaving it with _____

designated to receive service for the respondent.

___I am over the age of 18 years and am not interested in nor a party to this case.

___I attempted to serve the respondent on ___ occasions but have not been able to locate the respondent. Return to the petitioner is made on _____.

_____ _____

Date ____Private Process Server

____ Sheriff of_____County

Signed under oath before me on _____>

_____ _____

Notary Public Address

My commission expires: _____

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APPENDIX F

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO

Case No. Division

TEMPORARY RESTRAINING ORDER

In re the Marriage of:

TERESA BARNTHOUSE, Petitioner,

and

WILLIAM BARNTHOUSE, Respondent.

TO RESPONDENT:

It satisfactorily appearing to this court that sufficient grounds exist for issuance of a Temporary Restraining Order pursuant to Uniform Dissolution of Marriage Act herein and that irreparable harm in the nature of severe emotional and/or physical harm to Petitioner and the minor children would result if the same were not issued without notice,

IT IS ORDERED that until further Order of this Court, you and your servants, agents, attorneys, employees, family and all persons under your control and direction are .

ENJOINED from molesting or disturbing the peace of Petitioner and the minor children, Petitioner's sister Liz Jackson and Petitioner's parents Mary and Elmer Jackson, whenever and wherever they may be found, including but not limited to entry upon or into the family home or premises, Petitioner's workplace, while Petitioner and the minor children are in her car at ther sister's home or at her parents' home, via the telephone or through the mail;

And you are further excluded from the family home located at 2795 East Jamison Place, Littleton, Colorado within 24 hours of service of this Temporary Restraining

BEST AVAILABLE COPY

(Appendix F continued, page 3):

Order upon you. You are further enjoined from removing the minor children from the physical custody of Petitioner and from the State of Colorado until further order of court.

ENJOINED from destroying, damaging, transferring, encumbering, concealing or in any wasy disposing of separate property of Petitioner or any joint property of the parties, including but not limited to the persoanal belongings of Petitioner and the minor children, except in the usual course of business or for the necessities of life, and to account to Petitioner and the Court for any extraordinary expenditures made by you after this Order is served; you are specifically enjoined from removing from the family home and property other than your personal belongings.

This Temporary Restraining Order shall be in effect immediately upon

service upon Respondent and shall continue in full force and effect until further order of this court, a decree of dissolution of marriage herein, or dismissal of this action.

This temporary restraining order may be served by private process server. Upon probable cause of a violation of this order, a law enforcement officer shall arrest Respondent and bond shall be set at $5000.00

DONE AND SIGNED this 12 day of March, 1985.

BY THE COURT:

District Court Judge

AFFIDAVIT OF SERVICE

STATE OF COLORADO)

) ss

BEST AVAILABLE COPY

(Appendix F continued, page 5):

County of)

I, _____, the affiant herein, being first duly sworn, depose and state that I am over the age of 18 years and am not interested in or a party to the within actions; that I personally served the within Temporary Restraining Order and Injunction, Affidavit in Support of Petlitioner's Motion for Temporary Restraining Order and Injunction in the within action, on this ____day of _____,_19__, by handing to and leaving with the Respondent at ____o'clock___.m.at_____, in the County of _____, a copy of each of the above-named papers in the action herein mentioned, and affiant further states that I know the person served as aforesaid to be Respondent.

The above and foregoing affidavit of service was sworn to before me by _____, on ___ day of _____, 19__

Witness my hand and official seal

My commission expires:_____

_____

NOTARY PUBIC

NOTICE

This Restraining Order does not prevent reasonable child visitation, the time, place, and circumstances of which shall be determined by Petitioner, pending further order of court, or a hearing concerning such visitation may be scheduled.

VERIFICATION

STATE OF COLORADO)

) ss.

County of Denver)

BEST AVAILABLE COPY

Appendix F continued, page 7:

I, Teresa Barnhouse, of lawful age and being first duly sworn, hereby state that I have read the foregoing Motion for Issuance of Temporary Restraining Order and Injunction and that the contents thereof are true and correct to the best of my knowledge and belief.

_____

Teresa Barnhouse

Subscribed and sworn to before me this _____day of _____, 1985.

Witness my hand and official seal.

My commission expires:

_____ _____

Notary Public

BEST AVAILA

APPENDIX G

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO

Case No. 85DR174, Division B

In re the Marriage of:

TERESA BARNTHOUSE, Petitioner,

and

WILLIAM BARNTHOUSE, Respondent.

THE PEOPLE OF THE STATE OF COLORADO, TO THE MANAGER OF SAFETY, AND EX-OFFICIO [illegible]

WHEREAS, in certain cause in said Court no pending, wherein TERESA BARNTHOUSE is Petitioner and WILLIAM BARNTHOUSE is Respondent, a certain order was entered pursuant to the dissolution of the marriage of the parties, whereby

LE COPY

respondent was enjoined from transferring, encumbering, concealing, or in any way disposing of, without the consent of the [illegible] or order of the Court, any real or personal property [illegible] in his name or under his control, and requiring him to account to the Court for all [illegible] and to deliver to the Court any property [illegible] and why a receiver should not be appointed [illegible] injunction is in effect.

[illegible] it appears to the Court [illegible] however, that it will be impossible to [illegible] at which the respondent can be heard in opposition [illegible] at which he can be required to comply with said order.

THESE ARE THEREFORE TO COMMAND YOU that you cite and give notice to the said WILLIAM BARNTHOUSE to appear before the Honorable Joyce J. Steinhardt on the 1st day of [illegible] 1985 at the hour of 10:00 a.m., to show cause if any he has why he should

not be punished for contempt, for neglect and refusal to comply with the order the court heretofore entered and that, to vindicate the dignity of the court, a fine or imprisonment may be imposed upon him.

STATE OF COLORADO)
) ss
County of)

WITNESS, clerk of our said court and the seal thereof hereunto affixed, at the Courthouse, Littleton, Colorado, this 10 day of Dec., 1968.

Eileen M. Fanning
CLERK OF THE DISTRICT COURT
2nd & Littleton Blvd.
Littleton, Colorado 80120

By _____
Deputy Clerk

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of, without consent of the other party or Order of Court, any marital property, except in the usual course of business or for any necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditure not in the usual course of affairs.

Furthermore, that in March of 1988, the Respondent had in his possession approximately $37,800 in cash, which he kept in his office and which he thereafter concealed from the Petitioner and transferred to various accounts in his own name or in the names of the children, some of which he disposed of during the proceedings, and all without the consent of the Petitioner or an Order of Court.

The Court finds that the Respondent transferred to an account at the Omni Bank, solely in his own name, the sum of

$27,026.59, which had been the savings acquired by the parties during the marriage; that into this same account at the Omni Bank, the Respondent deposited the sum of $56,161.94 from the sale of securities and a Conoco Investment plan, which, when combined with the beginning balance in account #130171-3 of $3,522.85 and the parties' federal income tax refund for 1984 of $6,800, as well as the other bank accounts listed in Petitioner's Exhibit CC, leaves a total of $107,026.30 in funds entirely under the Respondent's control, and which the Respondent claims to have spent during the pendency of these proceedings.

The Respondent admitted that he had taken approximately $90,000 in cash from Omni Bank on January 11, 1985, and deposited it in cash in his office and has used it from time to time throughout the

past year and now claims that none of those funds remain. The Respondent supplied to the Court his accounting of the expenditures he had made as contained in Petitioner's Exhibit BB.

The total of $107,026.30 in funds was entirely under the Respondent's control. He claims to have spent all of these dureing the pendency of these proceedings. The Respondent alleges in his Response to the Motion that the moneys were all spent on the necessities of life or the usual course of business.

The various exhibits submitted by the Respondent, including the accounting done in October, 1985, indicate different amounts for different expenditures, and the Court does not find them credible. The Respondent alleges that the money has been depleted, which may, in fact, be true. However, the depletion of money was

within the sole control of the Respondent, and his accounting is insufficient and indicates cash expenditures of over $30,000.

The Court finds that the evidence is insufficient to prove that the Respondent had the expenses and finds that the money is not accounted for.

The Court further finds that the wages earned by the Respondent were sufficient for him to support himself and to support his family. The expenditures made by him were extraordinary, wasteful, and completely unjustified.

The Court finds that the Respondent is in Contempt of Court for having violated the Restraining Order issued at the commencement of this case. Theses actions were willful and deliberate on the part of the Respondent.

With respect to the Contempt Citation issued by the court on November 26, 1985, the Court finds that the facts set forth in the affidavit submitted with said motion are true. The Respondent has disparaged the Petitioner in front of the children or within their hearing; the Respondent has discussed the dissolution action in front of the children and/or discussed his feelings surround the litigation and the Court Orders; the Respondent has made plans for the children's sports activities during the time that the Petitioner had visitation; and the Respondent has continued to sabatoge the children's time with their mother.

In regard to the portion of the Contempt Citation which refers with Linda Wagner, the Court finds as follows: the Temporary Orders stipulation read into the

record before the Referee reflected that the parties agreed the children would have no contact with Linda Wagner. It is the Court's understanding that the parties abided with this agreement until the November 4, 1985, Modified Order. The [illegible] parties, however, in open court referee [illegible] the parties if they agree to the stipulation which had been read into the record and they responded affirmatively. The Referee indicated that the failure to obey the stipulation could result in a Contempt Citation.

The Modified Temporary Order did not address the issue of Linda Wagner because the issue was not before the Court. It is the Respondent's position that the Modified Order regarding this issue voided the origninal Temporary Order.

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The Court finds that the Respondent is correct, that there was no specific Order regarding Linda Wagner after November 6, 1985, and , therefore, the Respondent's actions in regard to Linda Wagner can no longer be deemed willful. A matter of concern for this Court is the deceit which the Respondent is teaching the boys in this regard, and the Court is referring to the evidence at Permanent Orders regarding hiding Ms. Wagner in the van and tell the boys not to tell their mother. However, as to the issue of Linda Wagner, the Court finds there is no contempt.

The Court further finds that the Respondent is in contempt on the other issues in repsect to the November 6, 1985, Contempt Citation, in that he has discussed the dissolution action with the children; he has disparaged the

(Appendix D continued, page 10):

Petitioner; he has made plans for the children's sports during times that the Petitioner had visitation; and, in all other ways, continued to sabotage the children's time with their mother.

THE COURT, THEREFORE, finds the Respondent in Contempt of Court; that the Respondent knew of the Court Order; that he had the ability to obey the court order; that he has failed to obey the Court Order; and that his failure to obey the Court Order is willful and without justification. The Court finds his behavior offensive to the dignity of the Court, and the Court finds it must enter appropriate Orders to vindicate the dignity of the Court.

On the basis of the foregoing, the Court hereby orders the Respondent is hereby sentenced to be incarcerated in the

Arapahoe County Jail for a period of ninety days, such sentence to be suspended upon the condition that the Respondent not violate any of the orders of this Court heretofore or hereafter entered, including the orders contained below:

1. The Respondent is to pay child support and maintenance ordered in the April 1, 1986, Court Order;

2. The Respondent is to cease and desist from discussing the dissolution action with the children;

3. The Respondent is to cease and desist from interferring with the Petitioner's visitation in any manner;

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of Court by insisting that the older boys remain with their mother on her visitation days.

DONE IN CHAMBERS this 22 day of May, 1986.

BY THE COURT:

JOYCE S. STEINHARDT

District Court Judge

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EXHIBIT E

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO

Case No.

SUMMONS FOR DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION AND TEMPORARY INJUNCTION

In re the Marriage of:

TERESA BARNTHOUSE, Petitioner,

and

WILLIAM BARNTHOUSE, Respondent.

To the Respondent named above:

You are summoned and required to file with the Clerk of this Court a response to the attached petition within twenty (20) days after this summons is served on you in the State of Colorado, or within thirty (30) days after this summons is served on you outside the State of Colorado, or is published.

After ninety (90) days from the date of sevice or publication, the Court may enter

dividing marital property, and awarding custody, child support, maintenance, attorney fees, and costs to the extent the Court has jurisdiction.

If you fail to file a response or enter your appearance in this case, any or all of the above matters, or any other related matters which come before this court, may be decided without any further notice to you.

This is an action to obtain a decree of:

XX Disolution of Marriage

___ Legal Separation

as more fully described in the attached petition, and for custody of the following children:

Joseph Barnthouse, born 9/20/72

Jonathan Barnthouse, born 4/10/75

James Barnthouse, born 3/27/81

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property:

2795 E. Jamison Place, Littleton, CO

NOTICE:

Section 14-10-107, Colorado Revised Statutes 1973, provides that upon the filing of a petition for dissolution of marriage or legal separation by the petitioner or co-petitioner, and upon personal sevice of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, a temporary injunction shall be in effect against both parties until the final decree is entered or the petitioner is dismissed, or until further order of Court. This temporary injunction becomes an Order of Court upon personal service or upon waiver and acceptance of service. Either party may apply to the Court for furhter temporary orders, an

enjoined temporary injunction, or modification or revocation under Section 14-10-108, C.R.S. 1973, or any other appropriate Statute.

TEMPORARY INJUNCTION

BY ORDER OF COURT, YOU AND YOUR SPOUSE ARE:

A) Restrained from transferring, encumbering, concealing, or in any way disposing, without the consent of the other party or an order of the court, of any marital property, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures made after the injunction is in effect;

B) Enjoined from molesting or distrubing the peace of the other party; and